

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

THE BOARD OF TRUSTEES, in their  
capacities as Trustees of the LABORERS  
HEALTH AND WELFARE TRUST FUND  
FOR NORTHERN CALIFORNIA, et al.,

Plaintiffs,

vs.

ARTHUR HARRISON and BUTCH  
HARRISON, individually and doing business  
as HARRISON CONCRETE CUTTING,  
INC., a California corporation,

Defendants.

Case No: C 10-4803 SBA

**ORDER DENYING DEFENSE  
COUNSEL'S MOTION TO  
WITHDRAW**

Docket 16

The parties are presently before the Court on the motion of the law firm of Cook Brown, LLP to withdraw as counsel of record for Defendants Arthur Harrison, Butch Harrison and Harrison Concrete Cutting, Inc. Dkt. 16. The Court's Civil Local Rules authorize an attorney to withdraw as counsel of record so long as it (1) provides written notice to the client and all other parties in the action and (2) obtains leave of court. Civ. L.R. 11-5(a); see Darby v. City of Torrance, 810 F. Supp. 275, 276 (C.D. Cal. 1992). Permission to withdraw is discretionary. See Washington v. Sherwin Real Estate, 694 F.2d 1081, 1087 (7th Cir. 1982). The record shows that Cook Brown, LLP has not satisfied the first element of Local Rule 11-5, and therefore this Court must DENY its motion.

1 The declarations of Carrie Bushman and Brian D. Bertossa detail that Defendants  
2 contacted Cook Brown, LLP on an emergency basis to respond to a complaint filed against  
3 them, as well as to represent them in the action. To deal with the immediate crisis of  
4 responding to the complaint to avoid default, Bertossa obtained an extension of time to  
5 respond and sent Defendants a retainer agreement. From November 15 to December 23,  
6 2010, Bertossa and Bushman attempted to communicate with Defendants by telephone,  
7 letters and e-mail. They repeatedly asked Defendants to sign the retainer agreement so  
8 Cook Brown, LLP could represent them and to provide information so that they could  
9 prepare a proper response to the complaint. Bertossa and Bushman performed \$928 worth  
10 of services. Cook Brown, LLP billed Defendants and have never been paid. Defendants'  
11 lack of cooperation and refusal to pay counsel constitute good cause for withdrawal.

12 Federal Courts generally look to applicable state rules in determining whether  
13 adequate grounds exist to excuse counsel from further representation. See Denney v. City  
14 of Berkeley, No. C 02-5935 JL, 2004 WL 2648293, at \*3 (N.D. Cal. Nov. 18, 2004). Rule  
15 3-700 of the California Rules of Professional Conduct provides that counsel may withdraw  
16 if the client renders it unreasonably difficult for counsel to carry out its employment  
17 effectively or if the client breaches an obligation as to expenses or fees. Cal. R. Prof.  
18 Conduct 3-700(C)(1)(d)&(f); Denney, 2004 WL 2648293, at \*3.

19 Although Cook Brown, LLP have established good cause to withdraw, it has not  
20 submitted evidence that it notified Defendants or Plaintiffs of the instant motion. In her  
21 declaration, Bushman states that, through telephonic and e-mail communications the day  
22 before the response to the complaint was due on December 24, 2010, she left the firm's  
23 final messages to Defendants. In those messages, Bushman informed Defendants that the  
24 response was due the next day, and, if Cook Brown, LLP did not hear from Defendants, it  
25 would be the firm's last contact with them. Bertossa and Bushman have no statement in  
26 their declarations that they served their motion papers on Defendants or Plaintiffs' counsel.  
27 Cook Brown, LLP provides no proof of service that the papers were served on Defendants  
28 or Plaintiffs. Without establishing before this Court that it has provided the required

1 written notice of this motions to its client and all parties, the Court cannot grant Cook  
2 Brown, LLP's motion. The Court, therefore, DENIES Cook Brown, LLP's motion without  
3 prejudice to filing the motion with proof of satisfying the elements of Local Rule 11-5.


4 Accordingly,

5 IT IS HEREBY ORDERED THAT:

- 6 1. Cook Brown, LLP's Motion to Withdrawal as Defense Counsel is DENIED.
- 7 2. This TERMINATES Docket 16.

8 IT IS SO ORDERED.

9 Dated: April 22, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge